



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,370	07/23/2003	Ned W. Mizelle	79139	8233

22242 7590 08/03/2004

FITCH EVEN TABIN AND FLANNERY  
120 SOUTH LA SALLE STREET  
SUITE 1600  
CHICAGO, IL 60603-3406

EXAMINER

BURNHAM, SARAH C

ART UNIT	PAPER NUMBER
----------	--------------

3636

DATE MAILED: 08/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/625,370

Applicant(s)

MIZELLE ET AL.

Examiner

Sarah C. Burnham

Art Unit

3636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☒ Claim(s) 29 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 July 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "first resilient seating layer forms a sleeve receiving at least a portion of the seat support" (claim 6) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. Currently appears as if the first resilient seating layer (30) lies on top of the seat support but does not receive the seat support in any way.

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "the lower portion" (claim 15, line 2) lacks sufficient antecedent basis.

***Claim Objections***

4. Claims 11 and 17-19 is objected to because of the following informalities:
- It appears as if the word "indica" (claim 11, line 2) should be replaced with the word "indicia."
  - It appears as if the phrase "the first and second set of legs" (claim 17, lines 3-4 and claim 17, line 7) should be replaced with the phrase "the first and second sets of legs."
  - Claims 18 and 19 are objected to as being dependent upon an objected base claim.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

Art Unit: 3636

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-5, 9-10 and 14-16 are rejected as best understood with the above cited indefiniteness under 35 U.S.C. 102(e) as being anticipated by Tenenboym et al.

(6,612,652). With respect to claim 1, Tenenboym discloses a chair apparatus (10) comprising: a frame having a plurality of frame members (12)(16)(54)(88), the frame members (12)(16)(54)(88) being moveable between a first position (Figure 2) in which the seat is in a storage position and a second position (Figure 4) in which the seat is in a use position; a backrest (81) supported primarily by frame member (88); and a seat (22) supported primarily by frame members (54) and (16), the seat (22) comprising a seat support (30) and a resilient seating layer(46), the seat support (30) defining an opening (unlabeled) as is best disclosed in Figure 5 and at least a portion of the resilient seating layer (46) extends over the opening so that the resilient seating layer (46) is capable of extending below the seat support (30).

With respect to claim 2, a cover (26) extends over at least a portion of the resilient seating layer (30).

Art Unit: 3636

With respect to claim 3, a second resilient seating layer (24) extends over at least a portion of the first resilient seating layer (46).

With respect to claim 4, a cover (26) extends over at least a portion of the second resilient seating layer (24).

With respect to claim 5 and 8, a cover (26) forms a sleeve that receives at least a portion of the seat support (30). This attribute is best disclosed in Figure 5 where one can see cover (26) wrapping around seat support member (30) and into engagement with flange (42).

With respect to claims 9 and 12, the seat (22) further comprises a bottom cover (78) extending over at least a portion of the opening (unlabeled) of the seat support (30).

With respect to claim 10 and 13, the bottom cover (78) defines at least one aperture (79b) for air to pass through.

With respect to claim 14, a front cover (82) is attached to a lower portion (89) of the frame member (88).

With respect to claim 15, a rear cover (128) is attached to a lower portion (89) of the frame member (88).

With respect to claim 16, the rear cover (128) includes protruding portions (130).

7. Claims 17 are rejected under 35 U.S.C. 102(e) as being anticipated by Huang (6,709,050). Huang discloses a chair apparatus (Figure 1) comprising: a first set of legs (2); a second set of legs (1) pivotally connected at pivot point A to the first set of legs

(2), the first and second set of legs being moveable between a first position for use (Figure 1) and second position for storage (un-illustrated); a backrest (3) extending between the legs of the second set of legs (1); and a seat (4) supported by the first (2) and second (1) set of legs, the seat (4) comprising a seat support (40) and a resilient seating layer (43), the seat support (40) defining an opening (see Figure 3) and at least a portion of the resilient seating layer (43) extending over the opening so that the resilient seating layer is capable of extending below the seat support (40). With respect to claim 19, a first cover is disposed at the bottom of the first set of legs and a second cover is disposed at a bottom of the second set of legs as disclosed in Figure 2. These covers serve to prevent scratching of the floor.

8. Claims 20-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Burch (5,609,395). Burch discloses a chair apparatus (Figure 9) comprising: a frame (68) having a plurality of frame members (68')(83), the frame members being moveable between a first position (see Figure 9, phantom lines) for storage and a second position (see Figure 9, solid lines) for use; a seat (80) supported by the frame (68')(83); and a backrest (69) supported by the frame (68) and having a backrest support (2)(14)(1) at least partially enclosing at least a portion of the frame (68)

With respect to claim 21, the backrest support (2)(14)(1) is at a predetermined angle (see Figure 5) relative to the portion (unlabeled) of the frame (68) that supports the backrest (69).

Art Unit: 3636

With respect to claim 22, the backrest support (2)(14)(1) comprises at least two shell members (2)(14) that combine to at least partially enclose at least a portion (6) of the frame (68) that supports the backrest (69).

With respect to claim 23, the backrest (69) further comprises a layer of resilient material (1'') over at least a portion of one of the two shell members (2)(14).

With respect to claim 24, the backrest further comprises a cover (1') over at least a portion of the layer of resilient material (1'') and at least a portion of one of the two shell members (2)(14).

With respect to claim 25, the layer of resilient material (1'') has at least two different thicknesses as is best seen in Figure 3, where the thickness of the resilient layer gets narrower moving from top to bottom.

With respect to claim 26, the layer of resilient material (1'') defines a pocket (9) that receives part of shell members (2)(14).

With respect to claim 27, the resilient material (1'') forms a sleeve (9) that receives at least a portion of the at least two shell members (2)(14).

With respect to claim 28, the cover (1') forms a sleeve that receives at least a portion (at the edges thereof) of the at least two shell members (2)(14) and at least of portion of the layer of resilient material (1'').



***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tenenboym et al. (6,612,652) in view of Boulva (5,393,126). As disclosed above, Tenenboym et al. discloses all claimed elements with the exception of a first resilient seating layer forming a sleeve receiving at least a portion of the seat support.

Boulva teaches the use of a first resilient seating member (28) in the form of "a sleeve of woven polyethylene fibers" (column 4, line 18) for receiving a seat support (21).

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to replace the first resilient seating member (46) disclosed by Tenenboym et al. with the sleeve shaped seating member (28) taught by Boulva. Such a substitution would simplify the manufacturing process and eliminate the need for connector members (52) utilized by Tenenboym et al.

11. Claims 7-8 and 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tenenboym et al. (6,612,652) in view of Selbert et al. (4,723,816). As disclosed above, Tenenboym et al. reveals all claimed elements with the exception of a second

resilient seating layer in the form of a sleeve that receives at least a portion of the first resilient seating layer and at least a portion of the seat support.

Selbert et al. teaches the use of a second resilient seating layer (47) that receives at least a portion of a first resilient seating layer (18) and at least a portion of a seat support 13.

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to extend the second resilient layer (24) disclosed by Tenenboym et al. around the seat support (30) and the first resilient layer (46) as taught by Selbert et al. Such a modification would inhibit the second resilient layer (24) from slipping around on the seat support (30).

12. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tenenboym et al. (6,612,652) in view of Allegro, Jr. (5,887,942). As disclosed above, Tenenboym et al. reveals all claimed elements with the exception of a panel for displaying indicia.

Allegro teaches the use of a panel (106) attached to a seat bottom (104) for displaying indicia (114). The panel (106) doubles as a trash receptacle.

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to add a panel (106) as taught by Allegro to the seat disclosed by Tenenboym et al. Addition of such a panel (106) would help improve the cleanliness of facilities that used the folding seats.

Art Unit: 3636

13. Claim 18-19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Huang (6,709,050) in view of Swy (6,174,029). As disclosed above, Huang reveals all claimed elements with the exception of a back rest area that is larger than a seating area.

Swy teaches the use of a backrest area (30) that is larger than a seating area (20).

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to modify the size of the backrest (3) disclosed by Huang et al. Mere modifications of size are generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955). Additionally, Swy teaches the use of a backrest that is larger than a seating area. Such a configuration would improve the comfort of the seat occupant.

#### ***Allowable Subject Matter***

14. Claim 29 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to folding seats with cushioning elements in general:

- Masters et al. (6,010,195)
- Abu-Isa et al. (4,842,257)
- Teves (GB 2201088 A)
- Masters et al. (6,199,252)
- Aebischer et al. (6,106,071)
- Malak (4,861,104)
- Donnelly (5,375,914)


16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah C. Burnham whose telephone number is 703-305-7315. The examiner can normally be reached on M-Th 7:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 703-308-0827. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3636

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SCB  
July 27, 2004

  
**Peter M. Cuomo**  
Supervisory Patent Examiner  
Technology Center 3600